

APPEAL NO. 160879  
FILED JUNE 29, 2016

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on April 6, 2016, in San Antonio, Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the compensable injury of (date of injury), extends to spondylolisthesis at L4-5, L3-4 bulge and herniation, L4-5 bulge and herniation, L5-S1 bulge and herniation, and S1 radiculopathy; (2) the respondent (claimant) has not reached maximum medical improvement (MMI); (3) because the claimant has not reached MMI, an impairment rating (IR) cannot be determined at this time; and (4) the claimant had disability from May 8, 2015, and continuing through the date of the CCH. The appellant (self-insured) appeals the hearing officer's determinations of disability, MMI, IR, and extent of the compensable injury. The self-insured contends that the evidence does not support the hearing officer's determinations. The claimant responded, urging affirmance of the disputed determinations.

DECISION

Affirmed in part as reformed and reversed and rendered in part.

The parties stipulated, in part, that the claimant sustained a compensable injury in the form of a lumbar strain while lifting a stretcher from the ambulance. Finding of Fact No. 1.B. is a stipulation that the claimant was an employee of the city of San Antonio and that the claimant sustained a compensable injury. We note that the parties stipulated to the correct date of injury on the record but in Finding of Fact No. 1.B. contained in the decision, the hearing officer mistakenly referenced March 10, 2015, rather than the correct date of injury of (date of injury). We reform Finding of Fact No. 1.B. to reflect the correct date of injury, (date of injury), to conform to the actual stipulation made by the parties at the CCH.

Finding of Fact No. 1.C. is a stipulation that the employer provided workers' compensation insurance as a self-insured. However, as in Finding of Fact No. 1.B. the hearing officer again mistakenly referenced March 10, 2015, rather than the correct date of injury of (date of injury). We reform Finding of Fact No. 1.C. to reflect the correct date of injury, (date of injury), to conform to the actual stipulation made by the parties at the CCH.

Finding of Fact No. 1.E. is a stipulation regarding the appointment by the Texas Department of Insurance, Division of Workers' Compensation (Division) of (Dr. L) as designated doctor. The decision correctly notes that Dr. L was appointed to determine

MMI and IR. However, at the CCH the parties stipulated that Dr. L was appointed by the Division to determine MMI, IR, extent of injury, and return to work. We reform Finding of Fact No. 1.E. to reflect that Dr. L was also appointed by the Division as designated doctor to opine on extent of injury and return to work to conform to the actual stipulation made by the parties and the evidence.

Finding of Fact No. 1.H., in part, is a stipulation regarding the certification of MMI and IR made by the required medical examination (RME) post-designated doctor, (Dr. H). The decision states that Dr. H assigned an IR of zero percent. However, at the CCH the parties stipulated that Dr. H assigned an IR of five percent. Additionally, the record reflects that Dr. H assigned an IR of five percent. We reform Finding of Fact No. 1.H. to reflect the correct IR assigned by Dr. H to conform to the actual stipulation made by the parties and the evidence.

We note the hearing officer mistakenly referenced an incorrect street address for the registered agent of the self-insured. The hearing officer listed 100 Soledad, Suite 1000 as the street address of the registered agent. However, the self-insured's information sheet reflects that the street address for the self-insured's registered agent is 100 Military Plaza. We reform the hearing officer's decision to reflect the street address listed, 100 Military Plaza, on the self-insured's information sheet which was admitted into evidence at the CCH.

## **EXTENT OF INJURY**

The hearing officer's determination that the compensable injury of (date of injury), extends to spondylolisthesis at L4-5, L3-4 bulge and herniation, L4-5 bulge and herniation, L5-S1 bulge and herniation, and S1 radiculopathy is supported by sufficient evidence and is affirmed.

## **MMI**

The hearing officer's determination that the claimant has not reached MMI is supported by sufficient evidence and is affirmed.

## **IR**

The hearing officer's determination that because the claimant has not reached MMI, an IR cannot be determined at this time is supported by sufficient evidence and is affirmed.

## **DISABILITY**

The Benefit Review Conference Report listed the disputed disability issue as follows: Did the claimant have disability resulting from an injury sustained on (date of injury), and if so, for what period? At the CCH, the hearing officer stated that he “altered” the disability issue to read from May 9, 2015, through the date of the CCH because that was the period of disability being alleged. Both the claimant and the self-insured agreed with the modified issue. The hearing officer correctly reflected the disability issue as modified in the “Statement of the Case.” The hearing officer found that “[t]he compensable injury of (date of injury), was a cause of [the] [c]aimant’s inability to obtain or retain employment at wages equivalent to his wage prior to March 4, 2014, from May 9, 2015, through the date of [the CCH].” That finding is supported by sufficient evidence. However, we note the hearing officer mistakenly lists the date of injury as March 4, 2014, rather than (date of injury), in Finding of Fact No. 6 regarding disability.

In both the conclusion of law and decision, including that portion of the decision recited in the first paragraph of the decision and order, the hearing officer determined that the claimant had disability from May 8, 2015, and continuing through the date of the CCH. The hearing officer exceeded the scope of the issue when he determined that disability began on May 8, 2015. Accordingly, we reverse the hearing officer’s determination that the claimant had disability from May 8, 2015, and continuing through the date of the CCH and render a new decision that the claimant had disability from May 9, 2015, and continuing through the date of the CCH.

### **SUMMARY**

We reform Finding of Fact No. 1.B. as follows: On (date of injury), the claimant was the employee of the city of San Antonio, employer, and sustained a compensable injury in the form of a lumbar strain, while lifting a stretcher from the ambulance.

We reform Finding of Fact No. 1.C. as follows: On (date of injury), the employer provided workers’ compensation insurance with the city of San Antonio, self-insured.

We reform Finding of Fact No 1.E. as follows: The designated doctor, Dr. L was appointed to determine MMI, IR, extent of injury, and return to work.

We reform Finding of Fact No. 1.H. as follows: The RME post-designated doctor, Dr. H determined that the compensable injury did not extend to the disputed condition and the claimant reached MMI on May 18, 2015, with an IR of five percent.

We reform the hearing officer’s decision to reflect the street address listed, 100 Military Plaza, on the self-insured’s information sheet which was admitted into evidence at the CCH.

We affirm the hearing officer's determination that the compensable injury of (date of injury), extends to spondylolisthesis at L4-5, L3-4 bulge and herniation, L4-5 bulge and herniation, L5-S1 bulge and herniation, and S1 radiculopathy.

We affirm the hearing officer's determination that the claimant has not reached MMI.

We affirm the hearing officer's determination that because the claimant has not reached MMI, an IR cannot be determined at this time.

We reverse the hearing officer's determination that the claimant had disability from May 8, 2015, and continuing through the date of the CCH and render a new decision that the claimant had disability from May 9, 2015, and continuing through the date of the CCH.

The true corporate name of the insurance carrier is **CITY OF SAN ANTONIO (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**LETICIA M. VACEK  
100 MILITARY PLAZA  
SAN ANTONIO, TEXAS 78205.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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K. Eugene Kraft  
Appeals Judge

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Carisa Space-Beam  
Appeals Judge

